

REGINA McMAHON

IBLA 81-816

Decided August 3, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 16488 and OR MC 29753 through OR MC 29756.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

APPEARANCES: Regina McMahon, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Regina McMahon appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated May 28, 1981, which rejected her evidence of annual assessment work and declared the unpatented Mountain Lion Mine #1, Moon Mountain, Mountain Lion #3, Mountain Lion #4, and Mountain Lion #5 lode mining claims, OR MC 16488, OR MC 29753 through OR MC 29756, abandoned and void because that evidence of annual assessment work had not been filed for calendar year 1980 on or before December 30, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence was received and date stamped by BLM December 31, 1980, at 9:13 a.m.

Appellant states that she mailed the instrument describing the assessment work for 1980 by special delivery mail on December 29, 1980, from Los Angeles, California, with assurance from the Postal Service that the envelope would be delivered to BLM on December 30.

[1] Section 314 of FLPMA, supra, and the implementing regulations, 43 CFR 3833.2-1(a) and 3822.4, require that evidence of assessment work for each year be filed in the proper BLM office on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence shows that the document was actually mailed as claimed, the regulations define "file" to mean being received and date stamped by the proper BLM office. 43 CFR 1821.2-2(f); 43 CFR 3822.1-2(a). Thus, even if the delay in delivery of the envelope containing the evidence of assessment work to BLM was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra; James E. Yates, supra; Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Appellant should confer with BLM about the possibility of relocating her claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Edward W. Stuebing  
Administrative Judge

